

2612
No. 12412

United States
Court of Appeals
for the Ninth Circuit.

HALESTON DRUG STORES, INC.,

Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

Transcript of Record

Petition for Review of Order of the
National Labor Relations Board.

FILED
APR -5 1950

PAUL P. O'BRIEN,
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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United States of America
National Labor Relations Board

Case No. 36-CB-7

AMENDED CHARGE AGAINST LABOR
ORGANIZATION OR ITS AGENTS

Where a Charge Is Filed by a Labor Organization, or an Individual or Group Acting on Its Behalf, a Complaint Based Upon Such Charge Will Not Be Issued Unless the Charging Party and Any National or International Labor Organization of Which It Is an Affiliate or Constituent Unit Have Complied With Section 9 (f), (g), and (h) of the National Labor Relations Act.

Instructions: File an Original and 4 Copies of This Charge With the NLRB Regional Director for the Region in Which the Alleged Unfair Labor Practice Occurred or Is Occurring.

1. Labor Organization or Its Agents Against
Which Charge Is Brought

Name: Waitresses and Cafeteria Women, Local #305; Cooks and Assistants Union, Local #207; Waiters Union, Local #189; Bartenders, Card and Poolroom Workers, Local #496; Local Joint Executive Board of the H.&R.E.I.A. and B.I.L.of A.; and the Hotel Service Employees, Local 664.

Address: Portland, Oregon.

The Above-Named Organization(s) or Its Agents Has (Have) Engaged in and Is (Are) Engaging

in Unfair Labor Practices Within the Meaning of Section (8b) Subsection(s) 2 of the National Labor Relations Act, and These Unfair Labor Practices Are Unfair Labor Practices Affecting Commerce Within the Meaning of the Act.

2. Basis of the Charge:

(Be specific as to facts, names, addresses, plants involved, dates, places, etc. If more space is required, attach additional sheets.)

That said Unions are attempting to cause the employer to discriminate against his employees in violation of Subsection A(3) in that the said Unions are picketing one of the places of business of the said employer by attempting to enforce the employer to make his employees join said Unions and attempting to force the employer to sign a Union contract whereby all of his employees would be compelled to join the Unions or leave his employment and by handing out handbills in front of the other places of business of said employer, all of which actions contemplate the forcing of said employer to discriminate against his employees in forcing them to join a Union when said Unions do not represent a majority of his employees and are unable to be certified as the agent for his employees because they have not complied with the provisions of the National Labor Relations Act.

3. Name of Employer:

Haleston Drug Stores, a corporation.

4. Location of Plant Involved:

1003 S.W. Broadway; 1600 S.W. Morrison; 1102 S.W. 11th; 1320 S.W. Broadway.

5. Nature of Employer's Business:

Drug business and fountain lunch business.

6. No. of Workers Employed:

17.

7. Full Name of Party Filing Charge:

Haleston Drug Stores, a corporation.

8. Address of Party Filing Charge:

Oregonian Drug Co.

Broadway & Jefferson, Portland, Oregon.

9. Declaration:

I Declare That I Have Read the Above Charge and That the Statements Therein Are True to the Best of My Knowledge and Belief.

March 15, 1949.

By /s/ C. D. HALESTON,

(Signature of representative
or person making charge)
President.

Date Filed: 12-14-48.

Amended 3-15-49.

Received August 5, 1949.

United States of America, Before the National
Labor Relations Board, Nineteenth Region

Case No. 36-CB-7

In the Matter of

WAITRESSES AND CAFETERIA WOMEN'S
LOCAL No. 305, WAITERS LOCAL No. 189,
BARTENDERS, CARD & POOLROOM
WORKERS LOCAL No. 496, COOKS & AS-
SISTANTS LOCAL No. 207, HOTEL SERV-
ICE EMPLOYEES LOCAL No. 664, and
LOCAL JOINT EXECUTIVE BOARD OF
H. & R. E. I. A. AND B. I. L. OF A., com-
monly known as CULINARY WORKERS
ALLIANCE, Each Affiliated With Hotel &
Restaurant Employees and Bartenders Inter-
national Union, AFL,

and

HALESTON DRUG STORES, INC.

COMPLAINT

It having been charged by Haleston Drug Stores, Inc., that Waitresses and Cafeteria Women's Local No. 305, Waiters Local No. 189, Bartenders, Card & Poolroom Workers Local No. 496, Cooks & Assistants Local No. 207, Hotel Service Employees Local No. 664, and Local Joint Executive Board of H. & R. E. I. A. and B. I. L. of A, commonly known as Culinary Workers Alliance, each affiliated with Hotel & Restaurant Employees and Bartenders In-

ternational Union, AFL, the Respondents herein, have engaged in and now are engaging in certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended (61 Stat. 136), hereinafter called the Act, the General Counsel of the National Labor Relations Board, hereinafter called the Board, by the Regional Director for the Nineteenth Region, designated by the Board's Rules and Regulations, Series 5, as amended, Section 203.15, hereby issues this Complaint and alleges as follows:

I.

Haleston Drug Stores, Inc., hereinafter called the Employer, is a business enterprise incorporated and existing by virtue of the laws of the State of Oregon, and has its principal place of business in Portland, Oregon.

II.

The Employer has been and is engaged principally in operating four retail drug stores in the City of Portland, Oregon, commonly known as St. Francis Drug Store, New Heathman Hotel Drug Store, Comondore Drug Store, and Oregonian Drug Store. Annually the Employer makes purchases of drugs and merchandise for resale totaling approximately \$190,000, of which approximately 30 per cent is shipped to the Employer directly from points outside the State of Oregon, and of the remainder approximately 60 to 75 per cent are purchases made within the State of Oregon of goods

that originated outside of said State. Annually the Employer sells merchandise and drugs totaling in value approximately \$325,000, all of which sales are made locally at the Employer's drug stores.

III.

The Employer is engaged in commerce within the meaning of Section 2, subsections (6) and (7) of the Act.

IV.

Waitresses and Cafeteria Women's Local No. 305, hereinafter referred to as the Waitresses Local, Waiters Local No. 189, hereinafter referred to as the Waiters Local, Bartenders, Card & Poolroom Local No. 496, hereinafter referred to as the Bartenders Local, Cooks & Assistants Local No. 207, hereinafter referred to as the Cooks Local, Hotel Service Employees Local No. 664, hereinafter referred to as the Hotel Service Employees Local, and Local Joint Executive Board of H. & R. E. I. A. and B. I. L. of A., hereinafter referred to as the Culinary Workers Alliance, each affiliated with Hotel & Restaurant Employees and Bartenders International Union, in turn affiliated with the American Federation of Labor, each is a labor organization within the meaning of Section 2 (5) of the Act.

V.

Neither the Waitresses Local, nor the Waiters Local, nor the Bartenders Local, nor the Cooks Local, nor the Hotel Service Employees Local, nor the Culinary Workers Alliance has been certified

by the Board pursuant to the provisions of Section 9 (e) of the Act as having been authorized by a majority of the Employer's employees in any unit of the Employer's operations to negotiate in behalf of said employees a collective bargaining agreement which provides for membership in any of said labor organizations as a condition of employment under any circumstances.

VI.

On or about September 15, 1948, the Respondent Unions solicited the Employer to execute a collective bargaining agreement applicable to employees then employed and later to be employed at the Oregonian Drug Store, which agreement contained the following clauses:

2. During the life of this Agreement, the Employer will not employ in his establishment any person not a member in good standing of one of the Unions.

3. All new employees shall be secured by the Employer through the Union's offices.

The Respondent Unions were collectively identified as the Union in said proposed agreement.

VII.

The Employer, on said date and thereafter until the present date, did not agree and has not agreed to become a party to such agreement.

VIII.

On or about September 29, 1948, the Respondent

Unions caused the Employer and each of its stores aforesaid to be declared unfair to organized labor by the Central Labor Council of Portland and Vicinity, a labor organization, and the name of the Employer and of each of its stores to be published by said organization on its "Unfair List," and publicized thereafter until the present date as being unfair to organized labor.

IX.

On or about September 29, 1948, and thereafter until the present date, Respondent Unions have engaged in picketing the premises of the Oregonian Drug Store, and have caused the pickets to carry a banner on which appears in substance a statement that the Employer has been and is unfair to the Respondent Unions.

X.

During the period immediately preceding Christmas, 1948, Respondent Unions caused hand bills to be distributed to prospective patrons of the Employer at the approaches to the four drug stores of the Employer, again declaring the Employer to be unfair to organized labor and urging the prospective patrons not to patronize said stores.

XI.

The Respondent Unions have engaged in the conduct described in Paragraphs VIII, IX, and X, to cause the Employer to execute and become a party to the agreement described in Paragraph VI.

XII.

The Respondent Unions, by their conduct described in Paragraphs VI and VIII to XI, inclusive, have attempted to cause the Employer to discriminate against employees in regard to hire and tenure of employment, or the terms or conditions of employment, to encourage membership in the Respondent Unions and to discourage employees from exercising their rights to refrain from such concerted activity.

XIII.

The Respondent Unions, by their conduct and the acts described in Paragraphs VI and VIII to XII, inclusive, under the circumstances described in Paragraphs V and VII, have engaged in and are engaging in unfair labor practices within the meaning of Section 8 (b) (2) of the Act.

XIV.

The acts and conduct of the Respondent Unions as hereinabove set forth, affecting the operation of the Employer as described in Paragraphs I, II, and III above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States of the United States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

XV.

The aforesaid acts and conduct of the Respondent Unions as set forth above, constitute unfair labor practices affecting commerce within the meaning

of Section 8, subsection (b) (2), and Section 2, subsection (6) and (7) of the Act. .

Wherefore, the General Counsel of the National Labor Relations Board, on behalf of the Board, acting by and through the Regional Director for the Nineteenth Region of the Board, on this 2nd day of August, 1949, issues this Complaint against Waitresses and Cafeteria Women's Local No. 305, Waiters Local No. 189, Bartenders, Card & Pool-room Workers Local No. 496, Cooks & Assistants Local No. 207, Hotel Service Employees Local No. 664, and Local Joint Executive Board of H. & R. E. I. A. and B. I. L. of A., commonly known as Culinary Workers Alliance, each affiliated with Hotel & Restaurant Employees and Bartenders International Union, AFL, the Respondent Unions herein.

[Seal] /s/ KENNETH McCLASKEY,

Acting Regional Director, 19th Region, National Labor Relations Board, 515 Smith Tower, Seattle 4, Washington.

[Title of Board and Cause.]

MOTION FOR AN ORDER DISMISSING THE COMPLAINT

Come now the respondents in the above-entitled case and move for an order dismissing the complaint, on the ground and for the reasons:

1. That the employer involved is not engaged in an operation in commerce or affecting commerce.

2. That, even if it does affect interstate commerce, it would not effectuate the policies of the act to exercise jurisdiction.

See *In re Haleston Drug Store, Inc., and Retail Clerks International Association, Local 1092*, 82 NLRB 148, case No. 36-RM-26, April 15, 1949.

The respondents particularly urge that this case be dismissed forthwith, for the reason that testimony has already been taken in a previous representation case, and the Board has already decided not to exercise jurisdiction in this case. We therefore think that this is an appropriate case to be summarily dismissed, so that the parties will not be put to great time and expense to defend a frivolous case.

Dated this 3rd day of August, 1949.

GREEN, LANDYE &
RICHARDSON,

Attorneys for Respondents.

State of Oregon,
County of Multnomah—ss.

I, James Landye, one of attorneys for the respondents named herein, hereby certify that I have served a copy of the within motion by registered

mail upon Will H. Masters, attorney for Haleston Drug Stores, Inc., on the 3rd day of August, 1949.

/s/ JAMES LANDYE,
Of Attorneys for
Respondents.

Received August 5, 1949.

[Title of Board and Cause.]

ANSWER TO RESPONDENTS

Come now the respondents and in answer to the Complaint filed herein, allege, deny and admit as follows:

I.

Respondents have no information on which to base a belief as to Paragraphs I and II and therefore deny the same.

II.

As to Paragraph III, respondents deny said paragraph and further allege that even if such defendant is engaged in commerce within the meaning of the Act, it would not effectuate the purposes of the Act for the Board to assume jurisdiction herein.

III.

Admit Paragraphs IV and V.

IV.

Deny Paragraph VI and VII.

V.

Admit Paragraph VIII.

VI.

Deny Paragraphs IX, X, XI, XII, XIII, XIV, XV.

Wherefore the respondents, having answered the Complaint herein, request that the National Labor Relations Board find that said respondents have not been guilty of an unfair labor practice affecting commerce within the meaning of Section 8(a) (1) of the Labor-Management Relations Act of 1947, and that this action be dismissed with regard to said respondents.

GREEN, LANDYE &
RICHARDSON,

Attorneys for Respondents.

State of Oregon,
County of Multnomah—ss.

I, Cecil Jones, being first duly sworn, depose and say that I am Secretary of the Cooks & Assistants Local No. 207, one of respondents herein, and that the foregoing Answer is true as I verily believe.

CECIL JONES.

Subscribed and sworn to before me this 11th day of August, 1949.

JAMES LANDYE,

Notary Public for Oregon.

My commission expires Dec. 7, 1951.

A truly copy:

/s/ JAMES LANDYE,

Of Attys. for Respondents.

[Title of Board and Cause.]

ORDER DESIGNATING TRIAL EXAMINER

It Is Hereby Ordered that Charles W. Whittemore act as Trial Examiner in the above case and perform all the duties and exercise all the powers granted to trial examiners under the Rules and Regulations—Series 5, as amended, of the National Labor Relations Board.

Dated, Washington, D. C., August 11, 1949.

[Seal] /s/ WILLIAM E. SPENCER,
Acting Chief Trial Examiner.

[Title of Board and Cause.]

ORDER

The respondents having filed a motion to dismiss the complaint in this proceeding, and the Board having determined that the motion should be ruled upon pursuant to Section 203.25 of the Rules and Regulations of the Board,

It Is Hereby Ordered that the respondents' motion be, and it hereby is, referred to the Division of Trial Examiners for action pursuant to provisions of Section 203.25 of the Rules and Regulations.

Dated, Washington, D. C., August 10, 1949.

By direction of the Board:

/s/ FRANK M. KLEIFAR,
Executive Secretary.

[Title of Board and Cause.]

ORDER

Charges having been heretofore filed;

A complaint and notice of hearing having been issued on August 2, 1949, by the General Counsel of the National Labor Relations Board, by the Regional Director for the Nineteenth Region;

A motion having been filed with the Chief Trial Examiner on August 3, 1949, by the Respondents (Waitresses and Cafeteria Women's Local 305, et al.); urging summary dismissal of the complaint on the grounds:

1. That the employer involved is not engaged in an operation in commerce or affecting commerce.

2. That even if it does affect commerce, it would not effectuate the policies of the Act to exercise jurisdiction;

Said Respondents having, on August 5, requested that said motion be transferred to the Board for consideration;

Said motion having been referred by the Acting Chief Trial Examiner to the Board on August 9;

The Board, on August 10, having ordered: (1) that said motion be ruled upon pursuant to Section 203.25 of the Rules and Regulations of the Board, and (2) that said motion be referred to the Division of Trial Examiners;

The undersigned Trial Examiner having been duly designated by the Acting Chief Trial Examiner;

Said motion to dismiss having been referred to said Trial Examiner on August 11 for ruling pursuant to Section 203.25 of the Rules and Regulations;

Now, Therefore, the said Trial Examiner, being fully advised in the premises, having duly considered the matter, particularly the commerce allegations in the complaint, and having taken official notice of the findings and conclusions of the Board in Matter of Haleston Drug Stores, Inc., Case No. 36-RM-26, decided April 15, 1949, wherein the Board, without deciding whether or not the employer's operation affects commerce within the meaning of the National Labor Relations Act, concluded that "it would not effectuate the policies of the Act to exercise jurisdiction"; it is hereby:

Ordered that said motion for dismissal of the complaint be, and it hereby is, granted.

/s/ CHARLES W. WHITTEMORE,
Trial Examiner.

Signed at Washington, D. C., this 11th day of August, 1949.

Dated August 15, 1949.

[Title of Board and Cause.]

**MOTION TO RECONSIDER ORDER OF
TRIAL EXAMINER**

To: Chief Trial Examiner, Washington 25, D. C.
Comes now the Haleston Drug Stores, Inc., and

moves the Chief Trial Examiner to cause the Trial Examiner, Charles W. Whittemore, to reconsider his order which was made and entered August 11, 1949, granting the motion of respondents to dismiss the complaint in the above-entitled matter and dismissing said complaint for the reasons that:

1. Said Haleston Drug Stores, Inc., was prepared to introduce evidence to prove that said Haleston Drug Stores, Inc., was engaged in interstate commerce and engaged in operations affecting commerce as is set forth in Affidavit hereto attached, marked Exhibit "A," referred to and made a part hereof, and was prepared as is shown by said Affidavit to introduce additional evidence than that introduced in the case of Haleston Drug Stores, Inc., and International Retail Clerks, Food and Drug Clerks, Local 1092, AFL, case No. 36-RM-26, and that said Trial Examiner had no evidence before him at the time of making said order.

2. That said Trial Examiner's order is erroneous in that in the above-entitled case there are different parties than in the case of No. 36-RM-26 and that the holding of said Case No. 36-RM-26 is not a determination of the issues in the above-entitled case.

MASTERS and MASTERS,
By WILL H. MASTERS,
Attorneys for Haleston Drug
Stores, Inc.

EXHIBIT "A"

State of Oregon,
County of Multnomah—ss.

I, C. D. Haleston, being first duly sworn depose and say:

That I am the President of Haleston Drug Stores, Inc. That Haleston Drug Stores, Inc., operates four drug stores in the City of Portland, namely: The Oregonian Drug Co., Broadway and Jefferson Street, Portland, Oregon; the New Heathman Drug Co., New Heathman Hotel, Broadway and Salmon Streets, Portland, Oregon; St. Francis Hotel Drug Co., S. W. 11th and Main Streets, Portland, Oregon; and the Commodore Hotel Drug Co., in the Commodore Hotel, S. W. 16th and Morrison Street, Portland, Oregon, and for eleven months of 1948, the Terminal Drug Co. in Portland, Oregon, which drug store was discontinued and the stock in trade was moved to the other drug stores. That all of said drug stores sell the conventional line of drugs, medicines and cosmetics, operate a soda fountain lunch and prepare medical prescriptions.

I further say that the gross dollar volume of purchases of all of the stores operated by the Haleston Drug Stores, Inc., is the sum of \$323,938.54. That of these purchases, \$64,744.95, or 19.987%, was purchased wholly outside the State of Oregon; \$76,063.68, or 23.481%, was purchased from firms operating wholly without the State of Oregon but which goods were supplied from warehouses situate

the order of the Trial Examiner granting the motion to dismiss the complaint in the above-entitled proceeding.

On August 3, 1949, a motion was filed with the Board urging summary dismissal of the complaint for the reasons (1) that the Employer involved is not engaged in an operation in commerce or affecting commerce, and (2) that even if it does affect commerce, it would not effectuate the policies of the Act to exercise jurisdiction. On August 10, 1949, the Board ordered that said motion be referred to the Division of Trial Examiners for disposition pursuant to Section 203.25 of the Rules and Regulations of the Board. On August 11, 1949, the Trial Examiner issued an order granting the motion to dismiss the complaint on the ground that "whether or not the Employer's operation affects commerce within the meaning of the National Labor Relations Act . . . 'it would not effectuate the policies of the Act to exercise jurisdiction.' "

In justification of his ruling, the Trial Examiner relied on the conclusions and findings of the Board in a prior representation proceeding involving the same employer. Matter of Haleston Drug Stores, Inc., Case No. 36-RM-26, decided April 15, 1949. In that case the Board, without deciding whether the Employer's operation affects commerce within the meaning of the Act, dismissed the petition on the ground that inasmuch as the Employer's business is essentially local in character, it would not effectuate the policies of the Act to assert jurisdic-

tion. The General Counsel submits that the Trial Examiner erred (1) in failing to find that the Employer's operation affects commerce within the meaning of the Act, and (2) in refusing to exercise jurisdiction even though such jurisdiction exists in fact.

United States of America, Before the
National Labor Relations Board

Case No. 36-CB-7

In the Matter of

WAITRESSES AND CAFETERIA WOMEN'S
LOCAL NO. 305, WAITERS LOCAL NO. 189,
BARTENDERS, CARD & POOL ROOM
WORKERS LOCAL NO. 496, COOKS & AS-
SISTANTS LOCAL NO. 207, HOTEL SERV-
ICE EMPLOYEES LOCAL NO. 664, AND
LOCAL JOINT EXECUTIVE BOARD OF
H. & R.E.I.A. AND B.I.L. OF A., commonly
known as CULINARY WORKERS ALLI-
ANCE, each affiliated with HOTEL & RES-
TAURANT EMPLOYERS AND BARTEND-
ERS INTERNATIONAL UNION, AFL,

and

HALSTON DRUG STORES, INC.

DECISION AND ORDER

On August 11, 1949, Trial Examiner Charles W. Whittemore issued his order granting the motion

of the Respondents for dismissal of the complaint in the above-entitled proceeding on the ground that the assertion of jurisdiction over the operations of the Employer involved would not effectuate the policies of the Act. Thereafter the General Counsel filed a timely Request for Review of the Trial Examiner's order, pursuant to Section 203.27 of the Board's Rules and Regulations, Series 5, as amended. The Board has considered the entire record in this proceeding, including the arguments advanced by the parties.¹ For the reasons hereinafter stated, the order of the Trial Examiner dismissing the complaint is affirmed.

I. The Trial Examiner's order

In dismissing the complaint on the ground that the assertion of jurisdiction would not effectuate the policies of the Act, the Trial Examiner relied on our dismissal of a representation petition by the Employer involved herein, in *Matter of Haleston Drug*

¹The Employer filed a motion for reconsideration of the Trial Examiner's order with the Chief Trial Examiner, and filed exceptions to the order with the Board. Section 203.27 of the Board's Rules and Regulations provides that review of a Trial Examiner's order dismissing a complaint before issuance of an Intermediate Report may be had upon a request for review addressed to the Board. In view of the fact that the case is properly before us on the General Counsel's Request for Review, filed in accordance with the Board's Rules and Regulations, we have fully considered all the issues raised by the Employer's motion and exceptions.

Stores, Inc.² The Employer and the General Counsel contend that the dismissal without hearing is erroneous because it precluded the possibility of taking evidence on the commerce question. We find no merit in this contention. Like the Board, the Trial Examiner may take official notice of the record and findings of the Board in prior proceedings involving the same parties.³ It cannot, therefore, be said that the order of the Trial Examiner was not based on evidence.

In any event, for present purposes we shall assume the truth of the additional facts which the Employer and the General Counsel offer to prove concerning the relationship of the Employer's business to commerce. The amounts of the various transactions differ quantitatively from those which appear in the record of the representation proceeding. Nevertheless they still show no more than that the Employer operates a chain of retail drug stores in Portland, Oregon, making substantial out-of-State purchases but selling all of its merchandise locally.⁴

²82 N. L. R. B., No. 148.

³86 N. L. R. B., No. 125.

³It is immaterial that the same unions were not involved in both proceedings. The jurisdictional facts upon which the commerce finding was based are those relating to the business of the Employer, who is the same in both cases.

⁴The fact that the Employer makes an unspecified quantity of sales to transients from out of the State who may be staying at the hotels in which its stores

That is precisely the situation that presented itself in the representation case. Retail drug stores are essentially local operations, and in such cases we have frequently declined to assert jurisdiction where the only factor in favor of doing so was a substantial volume of out-of-State purchases.⁵ Accordingly we see no reason to reverse our earlier finding with respect to this Employer.⁶

II. The discretion of the Board to dismiss a complaint

However, the General Counsel's attack upon the Trial Examiner's order goes beyond the jurisdictional facts in this particular case. It is vigorously contended again that, once the General Counsel has issued a complaint, this Board is without discretion to dismiss a complaint solely because it believes that

are located does not establish a substantial volume of out-of-State sales sufficient to require us to reverse our earlier finding.

⁵See Matter of Sta-Kleen Bakery, Inc., 78 N. L. R. B. 798; Matter of Fehr Baking Company, 79 N. L. R. B. 440; Matter of Creamland Dairies Inc. 80 N. L. R. B., No. 21.

⁶While our findings of fact are not *res judicata* in any other proceeding, we will ordinarily not reverse them in the absence of some compelling consideration, such, for example, as a material change in circumstances. See Matter of Atlanta Brick and Tile Company, 83 N. L. R. B., No. 166; cf. Matter of Transit Casualty Company, 83 N. L. R. B., No. 128.

to assert jurisdiction would not effectuate the policies of the Act. The question of our power to dismiss a complaint for such reasons was considered and discussed at some length in our opinion in the A-1 Photo case,⁷ in which we affirmed the existence of that power. Since that opinion was issued, however, additional arguments bearing upon this issue, including those urged by the General Counsel in the instant case, have been presented to us. We consider it appropriate at this time to reappraise this problem in the light of some of the arguments which have been made, and to remove any misunderstanding that may exist as to the purport of the Board's unanimous decision in the A-1 Photo case.

First, a word of history, so that the issue may be viewed in proper perspective. Under the provisions of the original National Labor Relations Act, the Board exercised ultimate supervision over all steps in the procedural process before the Board and the courts, from the investigation of charges and the issuance of complaints to court application for the enforcement of its orders. In the exercise of its discretion, the Board could decline to issue complaints.⁸ After the issuance of a complaint and after hearing, it retained the lawful discretion, inherent in its function of administering the Act, to

⁷Matter of Local 905 of the Retail Clerks International Association (AFL), et al. (H. W. Smith d/b/a A-1 Photo Service), 83 N. L. R. B., No. 86.

⁸N. L. R. B. v. Indiana & Michigan Electric Company, 318 U. S. 9, 18-19.

dismiss a complaint for policy reasons.⁹ It also had broad discretion to determine the remedy, if any, which would effectuate the policies of the Act.¹⁰ Finally, the statute left it to the Board's discretion to determine whether or not to seek enforcement of its orders in the courts.¹¹

In short, the Board was permitted to make policy determinations at every stage of a proceeding. There was nothing unique in the existence of this

⁹*N. L. R. B. v. Indiana & Michigan Electric Company*, *supra*; *N. L. R. B. v. Federal Engineering Company, Inc.*, 153 F. 2d 233, 234 (C. A. 6); *Bethlehem Steel Company v. New York State Labor Relations Board*, 330 U. S. 767, 776; *Matter of Midwest Piping and Supply Co., Inc.*, 63 N. L. R. B. 1060; *Matter of Brown & Root, Inc.*, 51 N. L. R. B. 820; *Matter of Consolidated Aircraft Corp.*, 47 N. L. R. B. 69; *Matter of Wickwire Brothers*, 16 N. L. R. B. 316; *Matter of Godechaux Sugars, Inc.*, 12 N. L. R. B. 568.

¹⁰*Phelps Dodge Corporation v. N. L. R. B.* 313 U. S. 177, 194-195; *International Association of Machinists v. N. L. R. B.* 311 U. S. 72, 82; *Matter of The Ebco Manufacturing Company*, 67 N. L. R. B. 210; *Matter of Providence Gas Company*, 41 N. L. R. B. 1121; *Matter of Shenandoah-Dives Mining Company*, 11 N. L. R. B. 885; S. Rep. 573, 74th Cong., 1st Sess. p. 15.

¹¹Section 10 (e) of the original Act carried over unchanged in the amended Act provides: "The Board shall have power to petition any circuit court of appeals . . . for the enforcement of such order. . . ." (Emphasis supplied.) See also *N. L. R. B. v. Sunshine Mining Co.*, 125 F. 2d 757 (C. A. 9).

permissive power in the Board. Indeed, the presence of this discretion in the administrative agency charged with responsibility for effectuating the policy of a public statute is the hallmark of the administrative process. It is this very characteristic which distinguishes an administrative agency from a court of law. The latter adjudicates private rights according to the law of the land. It is not generally concerned with policy.¹² But an administrative agency, by its very nature, is governed by policy considerations, because it is concerned with public and not private rights.¹³ Hence, it must al-

¹²But even a Federal court is not without discretion to refuse to exercise existing jurisdiction. See *Meredith v. City of Winter Haven*, 320 U. S. 228, for a discussion of some of the instances where the exercise of such discretion may be justified by considerations of paramount public policy. And cf. 28 U.S.C.A., sec. 1254, defining the discretionary certiorari jurisdiction of the Supreme Court.

¹³Administrative agencies "do more than judicially and impartially apply the law as they find it to a controversy between private parties; they are charged with the carrying out of definite policies involving discretion and the formulation of subordinate policies to effectuate the purpose of the laws which they administer. The courts, on the other hand, take the law as they find it without any particular obligation to accomplish a particular public purpose or secure a certain result." Pillsbury, "Administrative Tribunals," 36 Harv. L. Rev. 405, 423 (1922). See also Chamberlain, *The Judicial Function in Federal Administrative Agencies* (1942) p. 55. In deciding upon a remedy, the Su-

ways have a large measure of discretion in discharging its functions. For this reason, cases which hold that when a law court has jurisdiction, it must exercise it, and that when it finds a violation of law it must grant a remedy, are inapplicable to an administrative tribunal such as this Board.

It is true, of course, that the 1947 amendments to the Act modified the Board's structure to the extent that they created the statutory office of General Counsel and gave to him

final authority, on behalf of the Board, in respect of the investigation of charges and issuance of complaints under Section 10, and in respect of the prosecution of such complaints before the Board, . . .

But there is no evidence either in the legislative history of the Labor Management Relations Act, or in the language of the Act itself, which indicates a purpose to change the entire character of the Board from a quasi-judicial agency to a pure court of law, hedged about with all the rigidities and limitations of such a tribunal.

In the new legislation, Congress was concerned only with separating the prosecuting and adjudicating functions within the Board. This Congress accomplished, by creating the office of General Counsel, to whom it transferred the investigatory and

preme Court has admonished the Board that it must consider not only the policy of the Act, but that of other statutory enactments. *Southern Steamship Company v. N. L. R. B.* 316 U. S. 31, 46.

prosecuting functions previously vested in the Board, with all accompanying discretion. For the rest, the structure and powers of the Board remained substantially unchanged. There is no basis for an inference that under these circumstances Congress intended to remove from the Board the discretionary authority it had previously exercised as an incident of its adjudicating function,¹⁴ including its power to dismiss a complaint, after hearing, for reasons of policy. The Board Members may no longer exercise a discretionary judgment at the beginning of an unfair labor practice proceeding. But this is a far cry from saying that they may not do so at subsequent stages of the proceeding, when the case is properly before them, or that the prosecutor's original exercise of discretion is binding on all persons for all time.

To sum up, then, the effect of the amendments: The General Counsel has the unfettered discretion to determine whether to issue a complaint and how to prosecute it. However, once the complaint has issued and the case has been submitted to the Board for decision, the "final authority" of the General Counsel is exhausted. Any action which the Board may take thereafter does not constitute a review of the independent portion of the General Counsel's authority. The Board may, as heretofore, dismiss a complaint because it believes the legal theory urged in support of the case inapplicable, or that the factual allegations of the complaint are un-

¹⁴*Queensboro Farms Products, Inc. v. Wickard*, 137 F. 2d 969, 977 (C.A. 2).

proved, or that the policy of the Act will not be effectuated by entertaining jurisdiction. The power to dismiss a complaint—whether for legal or policy reasons—is inherent in the Board's very function of administering the Act. There is no more encroachment on the General Counsel's original authority because the Board ultimately dismisses a complaint for policy reasons, than when it dismisses a complaint because the case has not been proved.¹⁵ Both the Board and the General Counsel are supreme within their respective statutory spheres: that of the General Counsel lies in investigating and prosecuting complaint cases; that of the Board in deciding such cases according to law and policy. The Board has neither desire nor authority to trespass upon the domain of the General Counsel; but neither may the General Counsel encroach upon the area continued to be entrusted to the Board.

For all the reasons given herein, we reaffirm the finding made in a A-1 Photo case, that the Board has discretionary authority under the Act to dismiss a complaint for policy reasons, that the existence of such discretion is not incompatible with the statutory power of the General Counsel to initiate proceedings by issuing complaints, and that that discretion is properly exercised where, as in this case,

¹⁵Senator Taft said in his supplementary analysis of the conference bill; "So far as having unfettered discretion he [the General Counsel], of course, must respect the rules of decision of the Board and of the courts." 93 Cong. Rec. 7000 (June 12, 1947).

we find that interruption of the Employer's business operations by a labor dispute would have only a remote and insubstantial effect on commerce. We shall therefore affirm the Trial Examiner's order dismissing the complaint.

ORDER

Upon the entire record in this case, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the complaint against the Waitresses and Cafeteria Women's Local No. 305, Waiters Local No. 189, Bartenders, Card & Pool-room Workers Local No. 496, Cooks & Assistants Local No. 207, Hotel Service Employees Local No. 664, and Local Joint Executive Board of H. & R.E.I.A. and B.I.L. of A., commonly known as Culinary Workers Alliance, each affiliated with Hotel & Restaurant Employees and Bartenders International Union, AFL, be, and it hereby is, dismissed.

Signed at Washington, D. C., this 31st day of Oct. 1949.

PAUL M. HERZOG,
Chairman.

JOHN M. HOUSTON,
Member.

JAMES J. REYNOLDS, JR.,
Member.

ABE MURDOCK,

Member.

J. COPELAND GRAY,

Member.

[Seal]

National Labor Relations Board.

Before the National Labor Relations Board
Nineteenth Region

Case No. 36-RM-26.

In the Matter of

HALESTON DRUG STORES

and

INTERNATIONAL RETAIL CLERKS FOOD
AND DRUG CLERKS, LOCAL 1092, AFL

Monday, January 10, 1949

Pursuant to notice, the above-entitled matter came
on for hearing at 10:00 a.m.

Before: Eleanor Nygren,
Hearing Officer.

Appearances:

WILL H. MASTERS of

MASTERS & MASTERS,

Yeon Building,

Portland, Oregon,

representing the petitioner.

HERBERT GALTON,

Morgan Building,

Portland, Oregon,

representing International Retail
Clerks, Food and Drug Clerks, Local
Number 1092, AF of L.

* * *

PROCEEDINGS

CHRIS HALESTON

a witness called by and on behalf of the Petitioner,
being first duly sworn, was examined and testified
as follows:

Direct Examination

By Mr. Masters:

Q. Will you state your name?

A. Chris Haleston.

Q. You are the president of the Haleston Drug
Stores, Inc.?

A. Yes.

Q. An Oregon corporation?

A. Yes, sir.

Q. And this Haleston Drug Stores operates how
many stores in the city of Portland, Oregon?

A. Four drug stores.

Q. What are the names and addresses of them?

A. The Heathman Hotel Drug Store, 1003 South-
west Broadway. St. Francis Hotel Drug Store,
1102 Southwest 11th. Commodore Hotel Drug Store,
1601 Southwest Morrison. And the Oregonian Drugs
at 1304 Southwest Broadway.

(Testimony of Chris Haleston.)

Q. Does the Haleston Drug Stores buy the supplies for all these drug stores?

A. The headquarters at the Heathman Hotel Drug Store, we buy all supplies for the four stores, outside of local merchandise that is delivered directly.

Mr. Masters: I would like to have this marked.

(Document marked Petitioner's Exhibit Number 1 for identification.)

Q. Handing you Petitioner's Exhibit Number 1, I ask you to state what that is.

A. This is a list of merchandise we bought since the first of the year.

Hearing Officer Nygren: The first of which year?

The Witness: The first of 1948, from firms out of State bought direct.

Q. From the first of January, 1948, to the first of January, 1949?

A. Until about the 15th of December.

Q. Until about the 15th of December, 1948. And does that also have a total on it of total purchases?

A. It has total purchases of \$189,157.39. Purchases out of State \$57,026.03.

Q. What percentage is this?

A. It is figured a percentage of about 30.15 per cent of out-of-State purchases.

Mr. Masters: I will offer that in evidence.

(Testimony of Chris Haleston.)

(Thereupon, the document marked Petitioner's Exhibit Number 1 for identification was offered in evidence.)

PETITIONER'S EXHIBIT NO. 1

55,416.87	Total	30.10%
197.55	Pyramid Rubber Co.	
43.32	Chas. A. Phillips Co.	
28.73	Dr. W. B. Caldwell Co.	
21.60	Woodburn & Co.	
518.20	The Toni Co.	
64.78	Imperial Candy Co.	
143.81	Harriet Hubbard Ayer	
49.50	American Safety Razor Co.	
112.92	Abbott Laboratories	
168.53	Bourjois, Inc.	
127.20	The Borden Company	
41.58	Harry Brown Confections	
23.76	Brown & Haley Tobacco Co.	
20.00	Chap Stick Co.	
314.85	Caron Corporation	
108.90	Parfums Ciro, Inc.	
55.80	Colonial Dames, Inc.	
456.88	Colgate P. O. Peet Co.	
15.93	Ceufit Sales Corp.	
40.92	D'Orsay Sales Co.	
30.00	Deadem, Inc.	
106.42	Dana Perfumes	
138.00	Irvin Freidman	

(Testimony of Chris Haleston.)

Petitioner's Exhibit Nò. 1—(Continued)

9.00	The De Vilbiss Co.
93.66	Florence Distributing Co.
49.60	F. W. Fitch Co.
164.55	Eversharp Company
137.25	Elgin American
343.57	Eastman Kodak Company
57.60	Barbara Gould
653.61	Gibson Art Co.
35.64	International Distributors
19.60	Iodent Chemical Co.
44.55	Imperial Candy Co.
112.19	Hudnut Sales Co.
124.27	Lucien LeLong
53.10	Lentheric, Inc.
51.76	Mycraft Prod., Inc.
61.56	Alfred D. McKelvy Co.
129.62	Modglin Company
14.40	Millers Forge
14.12	S. E. Massengell Co.
19.60	Noxema Chemical Co.
77.76	Owens Brush Co.
46.80	Ogilvia Sisters
42.61	Pressmaster Co.
44.03	Prophylatic Brush Co.
106.53	Pereline Works
95.85	Stephen Riley Co.
72.62	Charles Koppel Co.
37.62	Rogers Candy Co.

(Testimony of Chris Haleston.)

Petitioner's Exhibit No. 1—(Continued)

14.12	Anatole Robbins
72.15	Evyan Ltd.
194.23	So. Calif. Pen Co.
23.21	W. A. Shaffer Pen Co.
107.20	Stowall & Co.
160.57	Starite-Ginnie Son
183.46	S. & K. Sales Co.
78.30	Jean Vivadon
11.25	Thalson Company
12.86	Tacoma Drug Co.
90.10	Winthrop Stearns
71.15	J. B. Williams Co.
335.16	Stephen F. Whitman & Son
31.82	Weeks & Leo Co.
36.58	Northam Warren Copr.
62.24	Woodburn Co.
152.38	Wyeth, Inc.
241.65	Yardley of London
49.38	Zonite Corp.
82.67	Hughes Brushes, Inc.
3.64	"42" Products
109.19	Vicks Chemical Co.
254.72	Associated Sales Co.
1,709.46	Teletone Natl. Corp.
271.86	Shulton, Inc.
173.69	The Bayer Co.
28.44	Peggy Sage
60.76	Tampax, Inc.
601.89	Colgate P. O. Peet Co.

(Testimony of Chris Haleston.)

Petitioner's Exhibit No. 1—(Continued)

55.13	Colonial Dames, Inc.
13.72	Eastman Kodak Co.
82.67	Hughes Brush Co.
97.50	Imperial Candy Co.
76.88	Ogilvia Sisters
482.70	E. R. Squibb Co.
110.96	The Upjohn Company
36.58	Northam Warren Corp.
189.14	Brown & Haley Tobacco Co.
77.93	D'Orsay Sales Co.
77.06	Eastman Kodak Co.
49.98	Ever Dry Corp.
107.43	Empire Leather Goods
101.89	Houbigant Sales Corp.
64.87	Thomas Tuming & Co.
88.86	The Murine Co.
65.34	The Pepsodent Co.
127.31	Prophylatic Brush Co.
58.31	Chas. H. Phillips Co.
18.00	Wadburn & Co.
49.30	The R. L. Watkin Co.
117.40	Vick Chemical Co.
12.42	Bourjois, Inc.
56.36	Coco Cola Co.
484.50	Colgate P. O. Peet Co.
54.00	Wnader & Co.
10.20	American Optical Co.
24.70	Colonial Dames, Inc.
26.01	Coronet Toy Mfg. Co.

(Testimony of Chris Haleston.)

Petitioner's Exhibit No. 1—(Continued)

.47	Carel Laboratories
90.30	Eastman Kodak Co.
33.33	"42" Products, Ltd.
58.80	Evyant Ltd.
94.20	Jerry Elsner Co.
99.88	Barbara Gould
13.31	Imperial Candy Co.
44.60	The Kurlash Co., Inc.
29.05	Lucien LeLong, Inc.
64.57	Thos. Luming Co.
46.50	Noxema Chemical Co.
33.87	Natone Company
78.85	The Penslar Co.
152.36	The Pepsodent Co.
40.00	Pharmasco, Inc.
4.62	Rainbow Plastics
175.21	Roger & Gallet
222.85	Revlon Corp. of Calif.
67.40	Shulton, Inc.
181.24	W. A. Shaeffer Pen Co.
287.64	S. & K. Sales Co.
68.65	R. B. Semler, Inc.
85.80	Stowall & Company
81.44	M. Seller Co.
297.83	E. R. Squibb Co.
7.50	Salens Radio Service
329.28	Scholl Mfg. Co.
108.00	Paggy Sage, Inc.
73.63	Serutan Company

(Testimony of Chris Haleston.)

Petitioner's Exhibit No. 1—(Continued)

19.50	Thalson Co.
559.78	The Toni Co.
172.80	The Toni Co.
300.63	The Upjohn Co.
120.00	J. B. Williams Co.
54.00	Wander Co.
68.66	Winthrop Stearns, Inc.
140.70	Wyeth, Inc.
222.59	Whitehall Pharm. Co.
26.98	L. E. Waterman Co.
48.03	Zonite Prod. Corp.
113.00	Andrew Jergens Co.
12.53	Elmo Sales Corp.
1.05	Eversharp, Inc.
263.50	Grove Laboratories
68.99	Houbigant Sales Corp.
38.76	Conti Products
111.69	Whitehall Pharmacal Co.
520.89	Parker Pen Co.
693.17	Colgate P. O. Peet Co.
117.12	E. C. De Witt Co.
55.45	American Ferment Co.
144.21	Abbott Laboratory
19.60	Chap Stick Co.
29.15	Eversharp, Inc.
158.07	Gibson Greeting Cards
16.66	Penslar Co., Inc.
131.01	W. A. Shaeffer Pen Co.
212.95	E. R. Squibb & Sons

(Testimony of Chris Haleston.)

Petitioner's Exhibit No. 1—(Continued)

91.80	J. B. Williams Co.
101.05	Whitehall Pharmacal Co.
318.63	Yardley of London
89.96	R. L. Watkins
385.61	Associated Sales Co.
79.80	Bourjois, Inc.
153.49	The Bayer Co.
109.00	Becton Dickinson Co.
19.33	Eastmand Kodak Co.
210.14	Roco Creations
335.49	Thalson Co.
175.69	The Upjohn Co.
13.00	Diversey Machine Works
162.70	Lentheric, Inc.
154.97	Northam Warren Corp.
14.11	Ogilvie Sisters
25.39	Pictorial Paper Co.
44.00	Pacquin, Inc.
244.32	Revlon Corp. of Calif.
54.88	W. O. Washburn & Sons
61.42	Prophylastics
16.50	American Optical Co.
250.49	Tek-Hughes, Inc.
86.24	Stephen F. Whitman & Son
135.77	Wyeth, Inc.
51.31	Vick Chemical Co.
500.00	Ansco
18.74	Brown & Haley Tobacco Co.
109.68	Colgate P. O. Peet Co.

(Testimony of Chris Haleston.)

Petitioner's Exhibit No. 1—(Continued)

11.24	Colonial Dames
104.63	Centaur-Caldwell
52.92	Dodge, Inc.
23.67	Ogilvie Sisters
43.12	Pictorial Paper Package
40.82	Pharma. Craft Corp.
27.88	S. & K. Sales Co.
93.98	Shulton, Inc.
209.38	The Upjohn Co.
76.81	William R. Warner & Co.
133.37	Yardley of London
1,042.08	Revlon Corp. of Calif.
141.59	Diversey Machine Works
96.70	John Rustigan
33.24	Evyan, Ltd.
29.60	Jergens Co.
36.00	R. B. Semler, Inc.
62.41	J. B. Williams & Co.
112.81	Lentheric, Inc.
206.88	Tampax, Inc.
84.10	Thalson Co.
220.55	Colgate P. O. Peet Co.
231.08	Dana Perfumes
183.60	Delegar Products, Inc.
111.60	The De Vilbiss Co.
130.76	The Pepsodent Co.
112.20	Chas. H. Phillips Co.
63.75	Procter & Gamble Co.
332.16	Revlon Corp. of Calif.

(Testimony of Chris Haleston.)

Petitioner's Exhibit No. 1—(Continued)

198.00	Fridout Sales Co.
269.71	Shulton, Inc.
50.00	H. Dreyfuss & Co.
55.80	L. E. Waterman Co.
390.05	Prophylactic Brush Co.
156.46	Owens Brush Co.
50.00	Premier Sales Co.
7.84	American Phar. Co.
40.40	Aviatrix Company
33.52	Colonial Dames, Inc.
36.00	Chamberlain Sales Corp.
108.25	House of Eee's
135.63	Tek-Hughes, Inc.
29.62	H. Q. Z. Dist. Co.
14.12	Mademoiselle
64.87	Fred D. McKelvy
18.52	S. E. Messengill Co.
48.96	Murine Co., Inc.
213.70	Newell of Calif.
36.00	Noxema Chemical Co.
.80	Pharma. Co., Inc.
56.81	Roger & Gallet
2.45	Schieffelin & Co.
95.55	Stephen Ripley Co.
24.00	Sanitube Co.
2.52	Jean Vivandon Co., Inc.
283.55	Whitehall Pharm. Co.
1.03	Wilson Laboratories
62.07	Yardley of London

(Testimony of Chris Haleston.)

Petitioner's Exhibit No. 1—(Continued)

94.19	John Hudson Moore, Inc.
200.68	W. A. Schaeffer Pen Co.
147.00	White & Wyckoff Mfg. Co.
50.32	Kurlash, Inc.
33.32	Geo. W. Luft Co.
50.40	Dodge, Inc.
3.58	A. Sessenbrenner Sons
114.87	F. W. Fitch Co.
177.85	The Upjohn Company
131.87	Courtley, Ltd.
67.95	Cummer Company
100.60	Bourgeois Sales Corp.
21.17	Kathyrun, Inc.
178.04	Enger Kress Co.
40.98	Zonite Products Corp.
173.69	The Bayer Co.
389.17	Eastman Kodak Co.
64.67	Barbara Gould, Inc.
61.11	L. E. Waterman Co.
50.00	Rolane Sales Corp.
154.80	S. & K. Sales Co.
104.42	Harriet Hubbard Ayer
77.94	Diversey Machine Works
38.81	The DeVilviss Co.
59.98	Everdry Corp.
53.95	Northwestern Plastics
277.21	Yardley of London
89.64	Pharma Craft Corp.
356.06	Colgate P.O. Peet Co.

(Testimony of Chris Haleston.)

Petitioner's Exhibit No. 1—(Continued)

20.00	Iodent Chemical Co.
15.64	Pepsodent Co.
76.79	Lightfoot Schultz Co.
320.78	R. Mohr & Sons
48.47	Murine Co., Inc.
34.80	Charles E. Hires Co.
6.60	Imperial Candy Co.
63.78	D'Orsay Sales Co.
40.57	Colonial Dames, Inc.
130.04	Northam Warren Corp.
18.66	Paschall Laboratory
41.04	Mark Allen Co.
197.03	American Safety Razor Co.
230.99	The Upjohn Company
109.80	Pepsodent Co.
41.87	Roy Daumit Division
8.91	Alfred D. McKelvy Co.
194.73	Evyan Ltd.
44.10	Lady Esther, Ltd.
70.05	Brown & Haley Tobacco Co.
238.97	Mido Hosiery, Inc.
31.36	Requa Mfg. Co.
42.00	The Borden Co.
108.35	Shulton, Inc.
116.80	Whitehall Pharm. Co.
145.62	E. E. Fairchild Corp.
13.57	A. Sensenbrenner & Sons
4.72	Dana Perfumes, Inc.
113.25	Lucian LeLong Perfumes
336.30	Norwich Pharm Co.

(Testimony of Chris Haleston.)

Petitioner's Exhibit No. 1—(Continued)

37.44	Colgate P.O. Peet Co.
601.70	Revlon Corp. of Calif.
64.80	S. & K. Sales Co.
358.71	Abbott Laboratories
341.33	B. B. Pen Co., Inc.
47.63	Consolidated Cosmetics
42.34	Colonial Dames, Inc.
72.24	Barbara Gould, Inc.
1.47	Elgin American
2.98	F. W. Fitch Co.
65.47	Houbigant Sales Corp.
26.95	John Hudson Moore, Inc.
53.31	Geo. W. Luft Co., Inc.
168.67	Lentheric, Inc.
26.05	S. E. Massengill Co.
21.17	Mademoiselle
20.36	Ogilvie Sisters
117.36	The Pepsodent Co.
231.04	Roco Creations
65.80	Roger & Gallet
59.62	Standard Laboratories, Inc.
204.73	J. Tho. Erlin Co.
329.20	W. A. Shaeffer Pen Co.
21.38	Sanford S. Wendel Co.
67.65	R. B. Semler Co., Inc.
106.43	Tampax, Inc.
199.40	The Upjohn Co.
50.33	J. B. Williams Co.
210.49	Wyeth, Inc.

(Testimony of Chris Haleston.)

Petitioner's Exhibit No. 1—(Continued)

47.02	Yardley of London
1.39	Cummer Co.
2.98	F. W. Fitch Co.
1.77	Pauma Packaging Co.
3.19	Centaur Company
.90	Lady Esther
6.97	Roger & Gallet
1.83	Pharma Craft Corp.
3.39	Serutan
330.49	Hudnut Sales Co.
253.08	Winthrop Stearns, Inc.
76.33	Proctor & Gamble Co.
144.83	Barbara Gould, Inc.
80.57	Andrew Jergens Co.
39.66	Caron Corp.
252.99	Ansco
5.31	L. E. Waterman Co.
468.71	Caron Corp.
.97	Consolidated Cosmetics
250.00	Tek-Hughes, Inc.
669.74	Eastman Kodak Company
2.17	Tampax, Inc.
121.58	Vick Chemical Co.
92.80	Hires
4.74	Caron Corp.
102.51	R. Mohr & Sons
58.45	Sunset McKee Co.
27.21	F. W. Fitch Co.
67.85	American Stationery Prod. Co.

(Testimony of Chris Haleston.)

Petitioner's Exhibit No. 1—(Continued)

145.54	Theo Erlin Co.
88.20	S. & K. Sales Co.
108.00	Kersten Pipe Co.
133.96	Eiselle & Company
63.77	Cummer Co.
231.81	Hudnut Sales Co.
60.96	Abbott Laboratories
56.67	Lentheric, Inc.
254.70	Colgate P. O. Peet Co.
38.10	C. A. King Co.
312.60	Parfums Eryan Dist.
96.00	Takara Lab., Inc.
294.59	Revlon Corp. of Calif.
45.36	Owens Brush Co.
24.13	Lanteenn Med. Lab., Inc.
26.13	Bell Chemical Co.
42.07	Northam Warren Corp.
53.85	Shulton, Inc.
108.20	Norwish Pharmacal Co.
127.01	S. & K. Sales Co.
270.51	S. Whitman & Sons
31.80	Ogilvie Sisters
103.78	Roco Creations
18.00	Anatole Robbins
41.16	Plate', Inc.
28.33	Mauvel Ltd.
121.30	Dodge, Inc.
233.30	Phoplylactic Brush Co.
13.00	R. B. Semler, Inc.

(Testimony of Chris Haleston.)

Petitioner's Exhibit No. 1—(Continued)

63.23	Lucien LeLong
177.19	Revlon Corp. of Calif.
42.00	The Kurlash Co.
73.58	Northam Warren Corp.
72.31	Harriet Hubbard Ayer
197.70	Elmo Sales Corp.
873.13	E. R. Squibbs & Son
63.44	American Ferment Co.
113.73	Red Cutlery Corp.
56.16	E. C. DeWitt Co.
123.82	The DeVilbiss Co.
88.96	Chas. H. Phillips Co.
34.56	Natone Co., Inc.
184.88	Whitehall Pharmacal Co.
169.29	Wyeth, Inc.
45.60	Howe Company
3.04	Sanford S. Wendel Co.
18.18	Winthrop Stearns Co.
1.56	R. L. Watkins Co.
34.88	Reliance Molded Plastics
16.69	Mill Factors Corp.
4.50	Roux Distributing Co.
37.23	Jean Jordeau, Inc.
13.31	Imperial Candy Co.
20.00	Iodent Chemical Co.
70.12	Tampax, Inc.
438.44	E. R. Squibbs & Sons
8.15	W. A. Shaeffer Pen Co.
71.65	Thalson & Co.

(Testimony of Chris Haleston.)

Petitioner's Exhibit No. 1—(Continued)

43.20	Plate', Inc.
146.20	Solon Palmer
120.84	The Pepsodent Co.
96.76	Lentheric, Inc.
262.44	Max Landau & Co.
37.13	Barbara Gould, Inc.
118.21	Eastman Kodak Company
164.24	Becton Dickinson Co.
302.11	AnSCO
207.73	Abbott Laboratories
236.54	Mido Hosiery
8.30	B. B. Pen Co.
31.14	Caro Corporation
12.28	The DeVilbiss Co.
1.06	Chas. E. Hires Co.
29.31	Lucien LeLong, Inc.
27.64	Noxema Chemical Co.
12.32	Curfet Sales Corp.
.72	Rex Cutlery Corp.
10.00	The Thalson Co.
139.34	S. & K. Sales Co.
159.90	Revlon Corp. of Calif.
237.08	Gibson Art. Co.
3.75	The F. W. Fitch Co.
40.00	Marlin Firearms Co.
2.39	Mido Hosiery Mills
17.77	The Semlar Co.
2.46	The Pepsodent Co.
19.60	Chap Stick Co.

(Testimony of Chris Haleston.)

Petitioner's Exhibit No. 1—(Continued)

12.70	Ambernuts Co.
9.60	Fred W. Aust Co.
11.85	Becton Dickinson & Co.
293.41	Dolcin Corp.
15.88	The DeVilbiss Co.
16.00	Noxema Chemical Co.
197.23	The Schall Mfg. Co.
84.67	The Toni Company
64.29	B. B. Pen Co.
42.34	Amour Toiletries
44.61	The Sofskin Co.
45.08	Continental Pharm. Co.
75.71	The Centaur Caldwell Div.
16.64	Lionel Plastics Corp.
34.16	Lesco Sales Corp.
2.11	Kirsten Pipe Co.
239.42	Wyeth, Inc.
9.35	Allergy & Medical Prods.
24.53	Copeland Candies
13.67	Kelling Nut Co.
244.32	Revlon Corp. of Calif.
42.39	Evans Pen Corp.
77.76	Delegar Products
83.75	Geo. Fick Cigar Co.
223.97	Prophylactic Brush Co.
228.62	Revlon Corp. of Calif.
17.47	The DeVilbiss Co.
197.23	Norwich Pharmacal
157.44	Zerbst Pharmacal Co.

(Testimony of Chris Haleston.)

Petitioner's Exhibit No. 1—(Continued)

69.22	Winthrop Stearns
70.69	Lightfoot Schultz Co.
40.12	Proctor & Gamble
127.00	S. & K. Sales Co.
156.47	Revlon Corp. of Calif.
1.85	The DeVilbiss Co.
20.85	Liberty Orchards Co.
432.00	Peck Corporation
196.77	Whitehall Pharmacal
15.72	Imperial Candy Co.
106.33	R. B. Semler Co.

Total Purchases	\$189,157.39
Purchases Out of State.....	57,026.03
Percentage	30.15%

Admitted Jan. 10, 1949.

Mr. Galton: With reference to the admission of this Petitioner's Exhibit Number 1, there are certain questions that I would *like ask* Mr. Haleston, but before doing so, to facilitate the hearing, I will return it to Mr. Masters and withhold my objection until the admission of this in evidence, and until I have had an opportunity to examine him.

Mr. Masters: I want to get it in so I can use it to refer to. That is all. You can make your objections and move to strike it out.

(Testimony of Chris Haleston.)

Hearing Officer Nygren: Do you wish——

Mr. Galton: I would like to reserve my objection.

Hearing Officer Nygren: Suppose you ask the questions about it right now.

Mr. Masters: The chances are I will ask the questions. I would like to finish with it.

Mr. Galton: Let it go in, with my right to state my——

Hearing Officer Nygren: Petitioner's Exhibit Number 1 is received in the record.

(Document marked Petitioner's Exhibit Number 1 for identification was received in evidence.)

Q. (By Mr. Masters): Mr. Haleston, with reference to Petitioner's Exhibit Number 1, the items set forth in it, were they all purchased outside of the State of Oregon?

A. They were all purchased outside of the State of Oregon.

Q. And they were shipped direct to you?

A. Direct to us, at 1103 Southwest Broadway.

Q. From outside of the State of Oregon?

A. Yes. Or they may have been shipped to one of the other stores. They were all outside of the State.

Q. Have you got a percentage of supplies that were purchased from local wholesalers who purchase them from out-of-State producers?

A. I don't have all the figures. We have esti-

(Testimony of Chris Haleston.)

mated, I have one figure which amounts to approximately \$55,000, that was purchased from the largest wholesaler, McKesson & Robbins, and we estimated that at least 60 per cent of the merchandise purchased from McKesson & Robbins come from out-of-State.

Mr. Galton: I object to that. I think it is beyond——

Hearing Officer Nygren: Objection overruled.

Mr. Galton: Pardon me. Let me, if the Hearing Officer will permit, I would like to state my full objection so the Board will have the advantage of what I am trying to say. I object to it for the reason that I think it is beyond this gentleman's knowledge as to whether the products emanated from. I think the proper testimony would be a man from McKesson & Robbins to state just exactly where these products came from.

Hearing Officer Nygren: Objection overruled.

Q. (By Mr. Masters): How long have you been in the drug business, Mr. Haleston?

A. I have been in the drug business for twenty-seven years—twenty-seven years.

Q. Do you know of your own knowledge that these articles you are talking about that you purchased from McKesson & Robbins are manufactured outside of the State?

A. I know very well from the experience we have had from the merchandise we buy from McKesson & Robbins, I estimate 60 per cent, I know more than that come from out-of-State.

(Testimony of Chris Haleston.)

Q. Do you know approximately the percentage that were purchased from all branches of out-of-State producers?

A. Do you mean out-of-State manufacturers?

Q. Yes.

A. That may have a warehouse in this State?

Q. Yes.

A. That would come to about 10 per cent. It would be such items as Upjohn Company, and Sharpe & Dohme. Those are the two main ones that we buy from, but there are others.

Q. Have you got approximately your total sales for the same period as Petitioner's Exhibit Number 1?

A. The total sales for the same period was \$308,011.21.

Mr. Masters: Do you want this affidavit into the record? He has testified to part of it now. I will put the rest of it in, I guess.

Hearing Officer Nygren: As an exhibit?

Mr. Masters: Yes.

Q. (By Mr. Masters): Your drug store at 1304 Southwest Broadway, when was that opened for business?

A. October the 1st, I believe it was opened—September 29th.

Q. Your purchases for that drug store amounted to how much?

Hearing Officer Nygren: That was 1948?

The Witness: 1948.

(Testimony of Chris Haleston.)

Q. For that period, from September 29, 1948, to December 15, 1948.

A. Purchases approximately 13,374.

Q. How much of those were shipped from out of State, purchased from out-of-State?

A. It would have the same percentage as the other stores, because they average about the same.

Q. 30.15 per cent? A. 30.15 per cent.

Q. How much of those materials were out-of-State origins although purchased within the State?

A. I would say approximately 60 per cent.

Q. What is your total sales for that same period?

A. \$20,061.00.

Q. Those sales were made in the State of Oregon?

A. You mean the sales of the sales of the stores?

Q. Yes. A. Oh, yes.

Q. You have no knowledge of any of your customers who make purchases in your stores, if they were from out-of-State or not?

A. No, I have no knowledge.

Q. But you sold to everybody that came along?

A. That is right.

Mr. Masters: I think that is all.

Cross-Examination

By Mr. Galton:

Q. Mr. Haleston, when was the corporation in this State organized? A. 1929.

Q. And you kept that same name since?

(Testimony of Chris Haleston.)

A. No, the name has been changed.

Q. What did the name used to be?

A. The name used to be St. Francis Drug Company, Inc.

Q. And they had just the one store, the St. Francis Drug?

A. No, they added the Eastman Hotel Drug Store, and later added the Commodore Hotel Drug.

Q. When did you add the Heathman?

A. About 1937.

Q. When did you add the Commodore Store?

A. About 1943.

Q. When was the name changed to Haleston Drug Stores, Inc.?

A. I don't remember exactly but it was some time in 1948.

Q. The first part of 1948? A. Yes.

Q. Now, what other business does the corporation own in addition to these four stores?

A. Right now, no other business.

Q. Did it own something previous to this?

A. It owned the stores of Terminal Drug Store, which is out of business at the time.

Q. Where was the Terminal Drug Store?

A. It was on 6th and Taylor.

Q. Sixth and Taylor? A. Yes.

Hearing Officer Nygren: In Portland?

The Witness: In Portland.

Q. Do you plan to reopen the Terminal Drug Store?

(Testimony of Chris Haleston.)

A. No, it is a different corporation, entirely separate.

Q. Is the Terminal Drug Stores a separate corporation? A. It was a separate corporation.

Q. But the Haleston Drug Stores, Inc. own the stock of the Terminal Drug Stores? A. Yes.

Mr. Masters: Capital stock?

The Witness: Capital stock.

Q. In other words, the Terminal Drug Stores is a wholly owned subsidiary of the Haleston Drug Stores, is that right?

A. They own the stock of the Terminal Drug.

Q. In other words, they control this additional corporation. What other business, if any, does the Haleston Drug Store Company own?

A. That is all now.

Q. That is all. Now, when you were talking——

A. (Interposing): For a short period, of course, we had the Haleston Drug Store, Number 4, which the Owl has bought, that was the one that was transferred to the Oregonian Drug Store.

Q. You talked about these purchases and sales. Were they purchases and sales of the drug business, or purchases and sales of the whole operation?

A. No, we did not include Terminal Drug Store sales, or the Haleston Drug Store sales in this, only in the four stores, that's all we included.

Q. Was the Terminal Drug Store operating then?

A. It was a different corporation, it operated different.

(Testimony of Chris Haleston.)

Q. In other words, the Terminal Drug Company has its own books and—— A. Yes.

Q. ——operates its own—— A. Yes.

Q. And you also excluded from these figures the operation of the Haleston Drug Store Number 4?

A. Yes.

Q. You do a lot of fountain business, do you not?

A. We do a considerable amount, yes.

Q. Have you included in these figures the receipts from the fountain business?

A. Yes, that's the total amount of sales.

Q. That is the total amount of sales?

A. Which not only includes the drug department but includes the fountain as well. Our fountain business perhaps would be, I would say, 20 or 25 per cent.

Q. So roughly, of the purchases, you would figure that 25 per cent of these purchases were attributable to the fountain business, is that correct, and that 25 per cent of the sales?

A. No.

Q. Pardon me.

A. However, we buy things like fountain service out-of-State.

Q. I am talking now as to the fountain business. Of the sales for the period that you stated amounting to roughly \$308,000, what percentage of that is attributable to the fountain business?

Mr. Masters: If the Examiner please, I object to it because I don't think it makes a particle of

(Testimony of Chris Haleston.)

difference, interstate commerce in both departments, the burden is going to be on the interstate commerce.

Mr. Galton: You are excluding fountain employees?

Mr. Masters: Yes, it doesn't make any difference, the burden would still be on interstate commerce, if we are in interstate commerce in any department, it is all one.

Hearing Officer Nygren: The objection is overruled. But make the questions on that question short, because I rather agree with counsel.

Q. (By Mr. Galton): All right. What percentage of the fountain business——

A. I have no figures.

Q. ——of the sales would be——

A. I can get the figures but I have no available figures.

Q. Would you estimate it at this time 10, 15, 25 per cent?

A. I would say the total amount, some stores don't do as much as others, would be in the neighborhood of 20 per cent.

Q. How about of the purchases, the same percentage?

A. The greater part of the purchases of the 20 per cent would be local. The main items purchased are manufactured locally.

Q. What I am trying to point out simply, is it fair to say that 20 per cent of the purchases and

(Testimony of Chris Haleston.)

20 per cent of the sales of the fountain department, that is the percentage that it clears to the total amount of sales and purchases that you totalled?

A. I wouldn't figure the same as it would be in the other.

Q. What would be the difference?

A. The difference would be, in our drug items, you can average about one-third and be almost right. But in the soda fountain department, you can't average the same proportion of profit because your combination and your ice cream will produce more as far as purchases and sales, and the sales would probably be the same, but the purchases would be different.

Q. Of the Haleston Drug Stores, what percentage of the space is occupied by the fountain and what percentage of the space is occupied by the Drug Department?

Mr. Masters: I object to that if the Examiner please, I don't think it makes a particle of difference.

Hearing Officer Nygren: Overruled.

Q. What percentage of the space?

A. I would imagine 15 per cent of the space.

Q. Is occupied by what?

A. By the soda fountain proper.

Q. And you, of course, have no breakdown of the sales that were made by the fountain department and the sales that were made by the drug store?

(Testimony of Chris Haleston.)

A. Yes, we have it, but I don't have it here.

Q. Now, of these purchases that you talked about during this 11½ month period, your total purchases was roughly \$189,000, is that right?

A. That is right.

Q. Now, of this total how much is purchased locally, I mean strictly local, from local producers?

A. Of the \$189,000 figure?

Q. Yes?

A. Average purchases of \$57,000 purchased out of State.

Q. And the rest purchased in the State?

A. Approximately,—no, that's out of state, the others would be in the State.

Q. I see. Now, of this \$57,000 that was purchased outside of the State, do you purchase it direct from the company or do you purchase it from a local salesman?

A. Direct from the company. The salesman, of course, we don't wait for the salesman, the salesman will make the regular calls, but if we are out of these items, you see, most of them are purchased from drugs out of State, we send the order direct and it is shipped to us direct.

Q. And it is shipped to you direct without going to a local warehouse?

A. It is shipped direct to us.

Q. I see. As far as your customers are concerned who purchase from your various and sundry drug

(Testimony of Chris Haleston.)

stores, you haven't the slightest idea where they come from?

A. No. I know there is a lot of them come from out of State, because we happen to have three hotel drug stores, and a lot of them travel.

Q. What percentage? A. I don't know.

Q. Is that right?

A. I don't have the figures?

Q. You don't know?

Mr. Masters: He said he didn't know.

The Witness: I don't have the figures.

Mr. Galton: Now he is saying he doesn't have the figures.

Q. You have no knowledge?

A. I have no knowledge.

Q. The Oregonian Store opened when?

A. September 29th.

Q. 1948, is that correct?

A. That is correct.

Q. And you indicated here that the same percentage of your purchases of \$13,374.00 of that, 30.15 per cent came, as you say, direct from out of State? A. Yes.

Q. Yes. To get this one point straightened out, in your petition you indicate that your business is a drug and fountain lunch business, that is correct, is it? A. Yes.

Q. Now, what percentage of the purchases for each of these businesses that your testimony is 20 per cent of the total purchases is attributable to the fountain lunch business, is that correct?

(Testimony of Chris Haleston.)

A. That is purely an estimate. I would say that is about right.

Q. About right. Now, of your fountain lunch business, the great majority of the products are bought locally, are they not, such as your ice cream?

A. Yes.

Q. And your syrups?

A. No, we buy syrups out of State, fountain syrups, we buy quite a few out of State.

Q. But the great majority is ice cream?

Mr. Masters: I still have an objection to all that line of questioning?

Hearing Officer Nygren: Yes, a continuing objection is granted.

Q. (By Mr. Galton): The bread you buy is bought locally? A. Yes.

Q. Who do you buy it from?

A. Wonder Bakery.

Q. Wonder Bakery, and that is a local bakery?

A. Yes.

Mr. Galton: I think that will be all.

Hearing Officer Nygren: I have just one question. It appears that you sell drugs and cosmetics, operate a fountain, also fill prescriptions at your drug stores?

The Witness: Yes, that is primarily our business.

* * *

United States of America
Before the National Labor Relations Board

Case No. 36-RM-26

In the Matter of

HALESTON DRUG STORES, INC.,¹

Employer and Petitioner,

and

RETAIL CLERKS' INTERNATIONAL ASSO-
CIATION, FOOD AND DRUG CLERKS,
LOCAL No. 1092, A.F.L.²

DECISION AND ORDER

Upon a petition duly filed, a hearing was held before a hearing officer of the National Labor Relations Board. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. At the hearing the Retail Clerks' International Association, Food and Drug Clerks, Local No. 1092, AFL, hereinafter referred to as the Union, moved to dismiss the petition on the ground that, inter alia, the Employer's business did not affect interstate commerce. For reasons hereinafter discussed, the motion is granted.

¹The name of the Employer as it appears in the formal papers was amended at the hearing.

²The name of the Retail Clerks' International Association, Food and Drug Clerks Local No. 1092, AFL, as it appears in the formal papers was amended at the hearing.

Upon the entire record in the case, the Board makes the following:

Findings of Fact

The Business of the Employer

The Employer-Petitioner, an Oregon corporation, operates four retail drug stores in Portland, Oregon, at each of which it sells conventional lines of drugs and cosmetics, operates a soda fountain, and prepares and sells medical prescriptions. During the period from January 1, 1948, to December 15, 1948, the Employer made purchases for resale totaling \$189,157.39 of which approximately 30.15 per cent was shipped to the Employer directly from points outside the State of Oregon. Approximately 60 to 75 per cent of the purchases made within the State was of goods originating outside the State, having been purchased from warehouses engaged in interstate commerce including McKesson & Robbins, Upjohn Company, and Sharpe & Dohme. Sales during the same period totaled \$308,011.21, all being made locally at the Employer's drug stores.

The Employer asserts that it is engaged in commerce within the meaning of the National Labor Relations Act. The Union, on the other hand, contends that the operation of the Employer is not one which affects interstate commerce, and that, even if it does affect interstate commerce, then it would not effectuate the policies of the Act to exercise jurisdiction. Without deciding whether or not the Employer's operation affects commerce

within the meaning of the Act, we do not believe that it would effectuate the policies of the Act to assert jurisdiction inasmuch as the Employer's business is essentially local in character. Accordingly we shall dismiss the petition.

Order

It Is Hereby Ordered that the petition for investigation and certification of representatives of employees of Haleston Drug Stores, Inc., Portland, Oregon, filed herein by Haleston Drug Stores, Inc., be, and it hereby is, dismissed.

Signed at Washington, D. C., this 15th day of April, 1949.

PAUL M. HERZOG,
Chairman,

JOHN M. HOUSTON,
Member,

JAMES J. REYNOLDS, JR.,
Member,

ABE MURDOCK,
Member,

J. COPELAND GRAY,
Member,

[Seal]

National Labor Relations Board.

[Endorsed]: No. 12412. United States Court of Appeals for the Ninth Circuit. Haleston Drug Stores, Inc., Petitioner, vs. National Labor Relations Board, Respondent. Transcript of Record. Petition for Review of Order of the National Labor Relations Board.

Filed January 16, 1950.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 12412

HALESTON DRUG STORES, INC.,

Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

PETITION FOR REVIEW OF THE DECISION
AND ORDER OF THE NATIONAL LABOR
RELATIONS BOARD

Comes now the Haleston Drug Stores, Inc., and pursuant to the provisions of Section 10 (f) of the Labor Management Relations Act, 1947, petitions the Court to review and set aside the decision and order of the National Labor Relations Board made and entered on the 31st day of October, 1949, wherein the National Labor Relations Board summarily dismissed the Complaint against Waitresses and Cafeteria Women's Local No. 305, Waiters Local No. 189, Bartenders, Card & Poolroom Workers Local No. 496, Cooks & Assistants Local No. 207, Hotel Service Employees Local No. 664, and Local Joint Executive Board of H. & R.E.I.A. and B.I.L. of A., commonly known as Culinary Workers Alliance, each affiliated with Hotel & Restaurant Employees and Bartenders International Union, AFL, issued by the General Counsel of the National Labor

Relations Board charging them with an unfair labor practice against Petitioner.

Petitioner claims that it is engaged in an operation in commerce or effecting commerce within the meaning of the Labor Management Relations Act, 1947, and, therefore, the National Labor Relations Board must take jurisdiction of the said Complaint and does not have any authority to refuse to exercise such jurisdiction.

Dated at Portland, Oregon, this 28th day of November, 1949.

HALESTON DRUG STORES,
INC.,

By /s/ C. D. HALESTON,
President.

MASTERS & MASTERS,

By /s/ WILL H. MASTERS,
of Attorneys for Petitioner.

Affidavit of Mailing attached.

[Endorsed]: Filed November 29, 1949.

[Title of Court of Appeals and Cause.]

ANSWER OF NATIONAL LABOR RELATIONS BOARD TO PETITION FOR REVIEW OF ITS ORDER AND DECISION

To the Honorable, the Judges of the United States Court of Appeals for the Ninth Circuit:

Comes now the National Labor Relations Board, herein called the Board, and pursuant to the Na-

tional Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C., Supp. II, Sec. 151, et seq.), herein called the Act, files this answer to the petition for review of its order and decision, issued in the proceeding designated on the records of the Board as Case No. 36-CB-7, entitled: In the Matter of Waitresses and Cafeteria Women's Local No. 305, Waiters Local No. 189, Bartenders, Card & Poolroom Workers Local No. 496, Cooks & Assistants Local No. 207, Hotel Service Employees Local No. 664, and Local Joint Executive Board of H. & R.E.I.A. and B.I.L. of A., commonly known as Culinary Workers Alliance, each affiliated with Hotel & Restaurant Employees and Bartenders International Union, A.F.L. and Haleston Drug Stores, Inc.

1. The Board prays reference to the certified transcript of the record, filed herewith, of the proceedings heretofore had herein, for a full and exact statement of the pleadings, evidence, findings of fact, conclusions of law, and order of the Board, and all other proceedings had in this matter.

2. The Board denies each and every allegation of error contained in the Petition for Review.

3. Further answering, the Board avers that the proceedings had before it, the findings of fact, conclusions of law, and order of the Board were and are in all respects valid and proper under the Act.

Wherefore, the Board respectfully requests this Court to deny the Petitioner's prayer for relief.

NATIONAL LABOR
RELATIONS BOARD,

By /s/ IDA KLAUS,
Solicitor.

Dated at Washington, D. C. this 13th day of January, 1950.

District of Columbia—ss.

Ida Klaus, being first duly sworn, states that she is Solicitor of the National Labor Relations Board, Respondent herein, and that she is authorized to and does make this verification in behalf of said Board; that she has read the foregoing answer and has knowledge of the contents thereof; and that the statements made therein are true to the best of her knowledge, information and belief.

/s/ IDA KLAUS,
Solicitor.

Subscribed and sworn to before me this 13th day of January, 1950.

[Seal] /s/ ROSEMARY FILIPOWICZ,
Notary Public,
District of Columbia.

My Commission expires March 15, 1953.

[Endorsed]: Filed January 16, 1950.

[Title of Court of Appeals and Cause.]

PETITIONER'S STATEMENT OF POINTS

The Petitioner will rely upon the following points in the above entitled matter:

1. The National Labor Relations Board was under a duty to determine from the evidence whether Petitioner's operations were in commerce or effecting commerce within the meaning of the Labor Management Relations Act, 1947.

2. The summary dismissal of the proceedings without hearing the evidence was in error.

3. If Petitioner's operations were, in fact, in commerce or effecting commerce within the meaning of the Labor Management Relations Act, 1947, the National Labor Relations Board was compelled to take jurisdiction and had no right to dismiss the complaint for reasons of policy.

4. The decision of the National Labor Relations Board in Case 36-RM-26 is not binding upon the Petitioner in this case because there are different parties and the subject matter is different.

Respectfully submitted,

/s/ WILL H. MASTERS,
of Attorneys for Petitioner.

State of Oregon,
County of Multnomah—ss.

Due and legal service of the within Petitioner's Statement of Points by receipt of a duly certified copy thereof, as required by law is hereby accepted in Multnomah County, Oregon, on this 23rd day of January, 1950.

/s/ B. A. GREEN,
Attorney for Unions.

Affidavit of Mailing attached.

[Endorsed]: Filed January 24, 1950.

[Title of Court of Appeals and Cause.]

DESIGNATION OF RECORD

Petitioner hereby designates the record which is material consideration of the review as follows, to-wit:

- (1) Amended charge by Petitioner of March 15, 1949.
- (2) Complaint issued by the National Labor Relations Board in case 36-CB-7, August 2, 1949.
- (3) Unions' motion for an order dismissing its complaint, August 3, 1949.
- (4) Unions' answer to complaint, August 11, 1949.

(5) Order designating Charles W. Whittemore as Trial Examiner, August 11, 1949.

(6) Order referring Unions' motion to dismiss to the Division of Trial Examiners for action, issued August 10, 1949.

(7) Order granting unions' motion by Trial Examiner, August 11, 1949.

(8) Petitioner's motion to reconsider order of Trial Examiner together with affidavit attached.

(9) That part of General Counsel's request for review dated August 23, 1949, down through the words "exist in fact" on Line 11, Page 2.

(10) The Board's decision and order on October 31, 1949.

(11) That part of the transcript of testimony in case 36-RM-26, beginning with direct examination Chris Haleston on Page 7, down through Line 21, Page 22, together with Petitioner's Exhibit 1.

(12) Decision and order of the Board in case 36-RM-26, April 15, 1949.

Respectfully submitted,

/s/ WILL H. MASTERS,

of Attorneys for Petitioner.

State of Oregon,
County of Multnomah—ss.

Due and legal service of the within Designation of Record by receipt of a duly certified copy thereof, as required by law is hereby accepted in Multnomah County, Oregon, on this 23rd day of January, 1950.

/s/ B. A. GREEN,
Attorney for Unions.

Affidavit of Mailing attached.

[Endorsed]: Filed January 24, 1950.